
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-02-PA-280
)	
Statcom Communications Corporation)	NAL/Acct. No. 200332400007
)	
Staten Island, New York)	FRN: 0005-1410-72
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 27, 2003

By the District Director, Philadelphia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Statcom Communications Corporation ("Statcom") has apparently violated Section 1.903(a) of the Commission's Rules (the "Rules").¹ This violation occurred as a result of Statcom's operation of two trunked radio systems at the unauthorized location of 700 Victory Boulevard, Staten Island, New York and its operation of radio transmitting equipment on the unauthorized frequency 462.075 MHz. We conclude that Statcom is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. On July 30, 2002, the Enforcement Bureau received information that Statcom was operating a trunked radio system at the unauthorized location of 700 Victory Boulevard, Staten Island, New York ("Parkview House"). FCC agents with the Philadelphia Office and New York Office conducted an investigation and found that on July 30, 2002 and July 31, 2002 Statcom operated a single trunked radio system on the frequencies 477.8125 MHz, 462.450 MHz, 461.450 MHz, 478.0875 MHz, 472.5125 MHz, 461.825 MHz, 462.025 MHz, 461.775 MHz, 461.475 MHz and 462.075 MHz at the Parkview House.

3. At the time of the investigation, Statcom was authorized to operate a trunked radio system at 10 Highpoint Road, Staten Island, New York on the frequencies 477.8125 MHz, 462.450 MHz, 461.450 MHz, 478.0875 MHz, 472.5125 MHz, and 461.825 MHz.² It was also authorized to operate a trunked radio system at 631 Howard Avenue, Staten Island, New York on the frequencies 462.025 MHz, 461.775 MHz and 461.475 MHz under the call sign WPUD412. At the time of the investigation, Statcom was not authorized to operate any radio transmitting equipment on any frequency at the Parkview House. At the time of the

¹ 47 C.F.R. § 1.903(a).

² Statcom is authorized to operate stations WIL718 (477.8125 MHz), WPPH856 (462.450 MHz), KNEW768 (461.450 MHz), WIL766 (478.0875 MHz and 472.5125 MHz) and WNIH640 (461.825 MHz) at 10 Highpoint Road, Staten Island, New York in a trunked radio system configuration.

inspection, Statcom did not have authorization to operate any radio transmitting equipment on the frequency 462.075 MHz at any location.

4. During an interview on July 31, 2002, Mr. Howard Miller, the President of Statcom, informed the FCC agents that Statcom recently relocated its trunked radio systems from 10 Highpoint Road, Staten Island, New York and 631 Howard Avenue, Staten Island New York. Statcom installed the two trunked radio systems at the Parkview House and combined them into a single trunked radio system. Mr. Miller acknowledged that Statcom relocated these stations prior to obtaining authorization from the Commission. He did not address Statcom's operation on the unauthorized frequency 462.075 MHz.

5. On August 5, 2002, the Philadelphia Office issued a Notice of Violation to Statcom for operating two trunked radio systems at the unauthorized location of 700 Victory Boulevard, Staten Island, New York and for operating radio transmitting equipment on the unauthorized frequency 462.075 MHz, in violation of Section 1.903(a) of the Rules. By letter dated August 19, 2002, Statcom submitted a response to the Notice of Violation. In the response, Statcom stated that it installed a trunked radio system at the Parkview House because its 22-channel trunked radio system at the World Trade Center was destroyed when the building collapsed on September 11, 2001. It acknowledged that it did overlook modifying the licenses for the Parkview House in its haste to provide adequate interference-free communications to its customers. It noted that it has taken steps to obtain authorization by filing license applications with the FCC for all the frequencies it intends to use at the Parkview House and by filing a request for Special Temporary Authority.

III. DISCUSSION

6. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part. Statcom was authorized to operate separate trunked radio systems at 10 Highpoint Road, Staten Island, New York and 631 Howard Avenue, Staten Island, New York. Statcom relocated these two trunked radio systems to the Parkview House prior to obtaining authorization from the Commission. On July 30, 2002 and July 31, 2002, Statcom operated these two trunked radio systems at the Parkview House. Furthermore, on July 30, 2002 and July 31, 2002, Statcom operated radio transmission equipment system at the Parkview House on the unauthorized frequency 462.075 MHz.

7. In its response to the Notice of Violation, Statcom explained that it was severely impacted on September 11, 2001 when its 22-channel trunked radio system at the World Trade Center was destroyed. Statcom detailed how it installed radio-transmitting equipment at alternative sites including the Parkview House to provide adequate coverage for its affected customers. However, the Enforcement Bureau conducted its inspection almost a year after September 11, 2001. Statcom had sufficient time to submit appropriate applications to the Commission for any changes that it made to its radio communications systems. None of the stations that the FCC agents inspected at the Parkview House were ever authorized to operate from the World Trade Center. In fact, Mr. Miller stated that Statcom had relocated the stations that were once licensed at the World Trade Center to 1 Chrysler Building, New York City, New York after September 11, 2001.

8. In response to a further inquiry from the Philadelphia Office, Statcom stated that operation on 462.075 MHz at the Parkview House was covered by an agreement with Frequency Plus Corp., the licensee of the equipment. Frequency Plus Corp. stated in response to a follow-up letter to them that Statcom was not authorized to relocate their transmitter from the licensed location of Todt Hill in Staten Island, New York.

9. Based on the evidence before us, we find that Statcom willfully³ and repeatedly⁴ violated Section 1.903(a) of the Rules. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),⁵ sets the base forfeiture amount for operation of each radio system at an unauthorized location at \$4,000 and for operation on an unauthorized frequency at \$4,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934,⁶ (the "Act"), as amended, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a twelve thousand dollar (\$12,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Statcom is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twelve thousand dollars (\$12,000) for its operation of two trunked radio systems at an unauthorized location and its operation of radio transmitting equipment on an unauthorized frequency.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Statcom SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332400007 and FRN: 0005-1410-72.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C § 503(b)(2)(D).

⁷ 47 U.S.C § 503(b).

⁸ 47 C.F.R. §§ 0.111 and 0.311.

Federal Communications Commission

INCLUDE THE NAL/Acct. No. 20033240007 and FRN: 0005-1410-72.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Statcom Communications Corporation, 1324 Forest Avenue, Staten Island, New York 10302.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes
District Director
Philadelphia Office

Attachment A: Condensed List of Small Agencies

⁹ See 47 C.F.R. § 1.1914.